

U.S. Department of Justice



*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 5, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell, S2 20 Cr. 330 (AJN)*

Dear Judge Nathan:

The Government respectfully submits this letter regarding the Court's instruction in advance of the testimony of Witness-3. Consistent with the Court's order, the Government is planning to elicit from Witness-3 only basic information about sexual activity that occurred with Epstein (*e.g.*, that it occurred, that Epstein initiated it, that it happened in the context of a massage, and the locations of the sexualized massages), without eliciting any details. The Government is concerned, however, that asking leading questions and obviously avoiding the details of the sexual activity will cause the jury to infer that the lack of detail reflects a lack of credibility. *See, e.g.*, 11/29/21 Tr. at 54 (defense opening argument that “they are going to recount things that they claim happened to them decades and decades ago. They are not going to be able to pinpoint dates . . . ”).

Accordingly, the Government respectfully requests that the Court inform the jury that the Government and Witness-3 are simply following the Court's instructions. The Government proposes the following addition to the limiting instruction the Court is already planning to give before Witness-3 testifies.

You will hear testimony from the next witness about interactions that she says she had with the Defendant and Mr. Epstein. I instruct you that because the witness was over the relevant age of consent at the relevant time period, any sexual conduct she says occurred with Mr. Epstein was not "illegal sexual activity" as the Government has charged in the Indictment. **For that reason, I have directed the parties not to ask Witness-3 about the details of any sexual conduct she says occurred with Mr. Epstein.** I instruct you that this witness is not a victim of the crimes charged in the Indictment. To the extent you conclude that her testimony is relevant to the issues before you, you may consider it. However, you may not convict the Defendant on the basis of the testimony regarding the sexual conduct between this witness and Mr. Epstein. Nor may you consider this testimony as any kind of reflection on Mr. Epstein's nor Ms. Maxwell's character or propensity to commit any of the crimes charged in the Indictment.

This addition to the proposed instruction is neutral but mitigates the risk of prejudice to the Government.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: _____ s/
Maurene Comey
Alison Moe
Lara Pomerantz
Andrew Rohrbach
Assistant United States Attorneys
Southern District of New York

Cc: Defense Counsel (by ECF)